

PATTERN JURY INSTRUCTIONS

(Introductory Note)

The pattern jury instructions are provided as a model from which the prosecutor can work. The instructions have been drafted to follow as closely as possible to the statute. With that, some cautionary words are also provided.

(Instructions and Definitions Must Be Supported By the Evidence)

A trial judge has a duty to prepare and give instructions on the whole law of the case, including any lesser included offenses which are supported by the evidence. However, the theory must have some evidentiary foundation. Therefore, “[a]n instruction on a lesser included offense is required only if, considering the totality of the evidence, the jury might have a reasonable doubt as to the defendant's guilt of the greater offense, and yet believe beyond a reasonable doubt that he is guilty of the lesser offense.” Neal v. Commonwealth, 95 S.W.3d 843, 850 -51 (Ky. 2003). In Burnett, the Court “held that a defendant is denied a unanimous verdict when the jury is presented with alternate theories of guilt in the instructions, and one or more of those theories, but not all, are unsupported by the evidence. The majority in that case held that such error, when preserved, was not subject to a harmless error analysis.” Commonwealth v. Whitmore, 92 S.W.3d 76, 81 (Ky. 2002) *citing* Burnett v. Commonwealth, 31 S.W.3d 878 (Ky. 2000). In the event the jury is given alternative theories of guilt, the trial court should require to jury to designate under which alternative guilt was found. Fulcher v. Commonwealth, 149 S.W.3d 363, 373 -74 (Ky. 2004); Purcell v. Commonwealth, 149 S.W.3d 382, 393 -94 (Ky. 2004).

The rule that an instruction had to be supported by the evidence was extended to include the definitional portion of the instructions in Whitmore, *supra*. An example where this may be problematic is the definition of “deception” found in KRS § 209.020(7). Therefore, whether in the definitions or in the instructions concerning the elements of the crime, care should be taken to insure that some evidence, or a reasonable inference from that evidence, supports the proposed instruction.

(When to Instruct The Jury On Penalties)

Since penalties under KRS § 209.990 involve felonies and misdemeanors, a note on instructing the jury of penalties during the guilt phase is in order.

There are three circumstances in which a defendant can be convicted of a misdemeanor: (1) in district court when the defendant is charged only with one or more misdemeanor offenses, KRS 24A.110(2); (2) in circuit court when a misdemeanor charge is joined in an indictment with a felony, *id.*, RCr 6.18, Keller v. Commonwealth, Ky., 594 S.W.2d 589 (1980); and (3) in circuit court when the defendant is indicted for a felony offense but convicted, as here, of a lesser included misdemeanor offense. *Cf. Commonwealth v. Adkins*, Ky., 29 S.W.3d 793 (2000).

Commonwealth v. Philpott, 75 S.W.3d 209, 212 (Ky. 2002).

In a case involving only a misdemeanor, the trial court must instruct the jury on the sentence in the guilt phase instructions, and the jury must return a penalty verdict along with a guilt verdict. RCr 9.84. However, if misdemeanor and felony charges are tried together, or if a felony has a lesser included misdemeanor charge, a penalty instruction on the misdemeanor cannot be given during the guilty phase instructions. Philpott, *supra* at 213; KRS § 532.055.

Building on this point, the Philpott Court went on to specify that if the jury returns verdicts for only misdemeanors, no additional evidence can be admitted, the jury must

immediately be instructed on the penalty range for that offense, and the attorneys shall be allowed additional argument only on the issue of punishment, following which the jury shall retire to deliberate on that issue. Philpott, *supra* at 213. "If, upon the conclusion of the trial of a multicount indictment, the jury returns verdicts finding the defendant guilty of both felony and misdemeanor offenses, and if either of the parties intends to offer evidence pursuant to KRS 532.055(2), the procedure described in the preceding sentence shall first be followed with respect to the misdemeanor convictions, after which the procedure described in KRS 532.055(2) and (3) shall be followed with respect to the felony convictions." Philpott, *supra* at 213 -14.

INSTRUCTION NO.

(Definitions)

“Intentionally” – A person acts intentionally with respect to a result or to conduct when his conscious objective is to cause that result or to engage in that conduct. (Source: KRS § 501.020(1); Cooper, William S., Kentucky Instructions to Juries, Sec. 3.01 (1993) (Cooper’s)).

“Knowingly” – A person acts knowingly with respect to conduct or to a circumstance when he is aware that his conduct is of that nature or that the circumstance exists. (Source: KRS § 501.020(2); Cooper’s, Sec. 3.02).

“Wantonly” – A person acts wantonly with respect to a result or to a circumstance when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. (Source: KRS § 501.020(3); Cooper’s, Sec. 3.03).

“Recklessly” – A person acts recklessly with respect to a result or to a circumstance when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. (Source: KRS § 501.020(4); Cooper’s, Sec. 3.04).

“Cabinet” – Cabinet means the Cabinet for Health and Family Services. (Source: KRS § 209.020(2)).

"Adult" – Adult means a person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his own resources, carry out the activity of daily living, or protect himself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services. (Source: KRS § 209.020(4)).

"Deception" – Deception means, but is not limited to: (a) Creating or reinforcing a false impression, including a false impression as to law, value, intention, or other state of mind; (b) Preventing another from acquiring information that would affect his or her judgment of a transaction; or (c) Failing to correct a false impression that the deceiver previously created or reinforced, or that the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship. (Source: KRS § 209.020(7)).

"Abuse" – Abuse means the infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that result in physical pain or injury, including mental injury. (Source: KRS § 209.020(8)).

"Neglect" – Neglect means a situation in which an adult is unable to perform or obtain for himself the goods or services that are necessary to maintain his health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult. (Source: KRS § 209.020(16)).

"Exploitation" – Exploitation means obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources. (Source: KRS § 209.020(9)).

“Physical Injury” – Physical injury mean substantial pain or any impairment of physical condition. (Source: KRS § 500.080(13)).

INSTRUCTION NO. _____

(Failure to Report Suspected [Abuse,] [Neglect,] [or Exploitation])

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

A. That in this county on or about (DATE) and before the finding of the indictment herein, he, had reasonable cause to suspect that (the victim) had suffered [abuse,] [neglect,] [exploitation]; and

B. He failed to immediately report or cause reports to be made by means of an oral or written report to the cabinet upon knowledge of the suspected [abuse,] [neglect,] [exploitation]; and

C. That in so doing, he knowingly or wantonly failed to report or cause reports to be made.

(Source: KRS § 209.030(2),(3), KRS § 209.990(1)).

(Note: KRS § 209.030(2)'s reporting requirement is similar to that found in KRS § 620.030(1) for a child that is dependant, neglected, or abused. However, KRS § 620.030(1) allows reporting to local law enforcement agency or the Kentucky State Police; the cabinet or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise. Chapter 209 and KRS § 209.030(3), specifically, only contemplates a report being made to the Cabinet for Health and Family Services.)

INSTRUCTION NO. _____

(Failure to Report Suspected [Abuse,] [Neglect,] [Exploitation])

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Failure to Report Suspected [Abuse,] [Neglect,] [Exploitation]. You shall now fix his punishment for that offense at confinement in the county jail for a period not to exceed 90 days, at a fine not to exceed \$250.00, or at both confinement and fine, in your discretion.

(Source, Cooper's Sec. 12.02A; KRS § 532.090(2); KRS § 534.040(2)(b); KRS § 209.990(1) is a Class B misdemeanor).

INSTRUCTION NO. _____

(Knowing Abuse of an Adult)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

A. That in this county on or about (DATE) and before the finding of the indictment herein, he knowingly abused (the victim);

B. That (the victim) was an adult as defined in these instructions.

(Source: KRS § 209.990(2)).

INSTRUCTION NO. _____

(Knowing Abuse of an Adult)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Abuse of an Adult. You shall now fix his punishment for that offense at confinement in the penitentiary for not less than 5 years, nor more than 10 years, in your discretion.

(Source, Cooper's Sec. 12.21; KRS § 532.060(2)(c); KRS § 209.990(2) is a Class C Felony).

INSTRUCTION NO. _____

(Knowing Neglect of an Adult)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

A. That in this county on or about (DATE) and before the finding of the indictment herein, he, knowingly neglected (the victim); and

B. That (the victim) was an adult as defined in these instructions.

(Source: KRS § 209.990(2)).

INSTRUCTION NO. _____

(Knowing Neglect of an Adult)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Neglect of an Adult. You shall now fix his punishment for that offense at confinement in the penitentiary for not less than 5 years, nor more than 10 years, in your discretion.

(Source, Cooper's Sec. 12.21; KRS § 532.060(2)(c); KRS § 209.990(2) is a Class C Felony)).

INSTRUCTION NO. _____

(Wanton Abuse of an Adult)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

A. That in this county on or about (DATE) and before the finding of the indictment herein, he, wantonly abused (the victim); and

B. That (the victim) was an adult as defined in these instructions.

(Source: KRS § 209.990(3)).

INSTRUCTION NO. _____

(Wanton Abuse of an Adult)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Abuse of an Adult. You shall now fix his punishment for that offense at confinement in the penitentiary for not less than one year, nor more than five years, in your discretion.

(Source, Cooper's Sec. 12.22; KRS § 532.060(2)(d); KRS § 209.990(3) is a Class D Felony).

INSTRUCTION NO.

(Wanton Neglect of an Adult)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

A. That in this county on or about (DATE) and before the finding of the indictment herein, he, wantonly neglected (the victim); and

B. That (the victim) was an adult as defined in these instructions.

(Source: KRS § 209.990(3)).

INSTRUCTION NO. _____

(Wanton Neglect of an Adult)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Neglect of an Adult. You shall now fix his punishment for that offense at confinement in the penitentiary for not less than one year, nor more than five years, in your discretion.

(Source, Cooper's Sec. 12.22; KRS § 532.060(2)(d); KRS § 209.990(3) is a Class D Felony).

INSTRUCTION NO.

(Reckless Abuse of an Adult)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

A. That in this county on or about (DATE) and before the finding of the indictment herein, he, recklessly abused (the victim); and

B. That (the victim) was an adult as defined in these instructions.

(Source: KRS § 209.990(4)).

INSTRUCTION NO. _____

(Reckless Abuse of an Adult)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Abuse of an Adult. You shall now fix his punishment for that offense at confinement in the county jail for a period not to exceed 12 months, at a fine not to exceed \$500.00, or at both confinement and fine, in your discretion.

(Source: Cooper's Sec. 12.01; KRS § 532.090(1); KRS § 534.040(2)(a); KRS § 209.990(4) is a Class A Misdemeanor).

INSTRUCTION NO.

(Reckless Neglect of an Adult)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

A. That in this county on or about (DATE) and before the finding of the indictment herein, he, recklessly neglected (the victim); and

B. That (the victim) was an adult as defined in these instructions.

(Source: KRS § 209.990(4)).

INSTRUCTION NO. _____

(Reckless Neglect of an Adult)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Abuse of an Adult. You shall now fix his punishment for that offense at confinement in the county jail for a period not to exceed 12 months, at a fine not to exceed \$500.00, or at both confinement and fine, in your discretion.

(Source: Cooper's Sec. 12.01; KRS § 532.090(1); KRS § 534.040(2)(a); KRS § 209.990(4) is a Class A Misdemeanor).

INSTRUCTION NO.

(Knowing Exploitation of an Adult \$300 or Less)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about (DATE) and before the finding of the indictment herein, he, knowingly exploited (the victim); and
- B. That (the victim) was an adult as defined in these instructions; and
- C. The exploitation resulted in a total loss to (the victim) of three hundred dollars (\$300) or less in financial or other resources, or both.

(Source: KRS § 209.990(7); KRS § 209.020(9)).

INSTRUCTION NO. _____

(Knowing Exploitation of an Adult \$300 or Less)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Abuse of an Adult. You shall now fix his punishment for that offense at confinement in the county jail for a period not to exceed 12 months, at a fine not to exceed \$500.00, or at both confinement and fine, in your discretion.

(Source, Cooper's Sec. 12.10; KRS § 532.090(1); KRS § 534.040(2)(a); KRS § 209.990(6) is a Class A Misdemeanor).

INSTRUCTION NO. _____

(Knowing Exploitation of an Adult More Than \$300)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about (DATE) and before the finding of the indictment herein, he, knowingly exploited (the victim); and
- B. That (the victim) was an adult as defined in these instructions; and
- C. The exploitation resulted in a total loss to (the victim) of more than three hundred (\$300.00) in financial or other resources, or both.

(Source: KRS § 209.990(5); KRS § 209.020(9)).

INSTRUCTION NO. _____

(Knowing Exploitation of an Adult More Than \$300)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Exploitation of an Adult. You shall now fix his punishment for that offense at confinement in the penitentiary for not less than 5 years, nor more than 10 years, in your discretion.

(Source, Cooper's Sec. 12.21; KRS § 532.060(2)(c); KRS § 209.990(5) is a Class C Felony).

INSTRUCTION NO. _____

(Wanton Exploitation of an Adult)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Exploitation of an Adult. You shall now fix his punishment for that offense at confinement in the penitentiary for not less than one year, nor more than five years, in your discretion.

(Source, Cooper's Sec. 12.22; KRS § 532.060(2)(d); KRS § 209.990(6) is a Class D Felony).

INSTRUCTION NO. _____

(Wanton Exploitation of an Adult \$300 or Less)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about (DATE) and before the finding of the indictment herein, he, wantonly exploited (the victim); and
- B. That (the victim) was an adult as defined in these instructions; and
- C. The exploitation resulted in a total loss to (the victim) of three hundred dollars (\$300) or less in financial or other resources, or both.

(Source: KRS § 209.990(7); KRS § 209.020(9)).

INSTRUCTION NO. _____

(Wanton Exploitation of an Adult \$300 or Less)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Abuse of an Adult. You shall now fix his punishment for that offense at confinement in the county jail for a period not to exceed 12 months, at a fine not to exceed \$500.00, or at both confinement and fine, in your discretion.

(Source, Cooper's Sec. 12.10; KRS § 532.090(1); KRS § 534.040(2)(a); KRS § 209.990(6) is a Class A Misdemeanor).

INSTRUCTION NO. _____

(Wanton Exploitation of an Adult More Than \$300)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about (DATE) and before the finding of the indictment herein, he, wantonly exploited (the victim); and
- B. That (the victim) was an adult as defined in these instructions; and
- C. The exploitation resulted in a total loss to (the victim) of more than three hundred (\$300.00) in financial or other resources, or both.

(Source: KRS § 209.990(6); KRS § 209.020(9)).

INSTRUCTION NO. _____

(Reckless Exploitation of an Adult \$300 or Less)

You will find the defendant guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about (DATE) and before the finding of the indictment herein, he, recklessly exploited (the victim); and
- B. That (the victim) was an adult as defined in these instructions; and
- C. The exploitation resulted in a total loss to (the victim) of three hundred dollars (\$300) or less in financial or other resources, or both.

(Source: KRS § 209.990(7); KRS § 209.020(9)).

INSTRUCTION NO. _____

(Reckless Exploitation of an Adult \$300 or Less)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Abuse of an Adult. You shall now fix his punishment for that offense at confinement in the county jail for a period not to exceed 12 months, at a fine not to exceed \$500.00, or at both confinement and fine, in your discretion.

(Source, Cooper's Sec. 12.10; KRS § 532.090(1); KRS § 534.040(2)(a); KRS § 209.990(6) is a Class A Misdemeanor).

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- A. That in this county on or about (DATE) and before the finding of the indictment herein, he, recklessly exploited (the victim); and
- B. That (the victim) was an adult as defined in these instructions; and
- C. The exploitation resulted in a total loss to (the victim) of more than three hundred (\$300.00) in financial or other resources, or both.

(Source: KRS § 209.990(6); KRS § 209.020(9)).

INSTRUCTION NO. _____

(Reckless Exploitation of an Adult)

You have found the Defendant guilty under Count ____ of the Indictment of the offense of Exploitation of an Adult. You shall now fix his punishment for that offense at confinement in the penitentiary for not less than one year, nor more than five years, in your discretion.

(Source, Cooper's Sec. 12.22; KRS § 532.060(2)(d); KRS § 209.990(6) is a Class D Felony).